

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6264 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHIRUBHAI KASHIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner

MR HL JANI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/11/97

ORAL JUDGEMENT

1. Mr. Girish Patel is present in the Court and he made a statement that his client has already taken the papers of this case from him and has engaged another counsel. The name of another counsel i.e Mr. S.V. Bachani has been shown in the board but nobody is present on his behalf.

2. Heard the learned counsel for the respondents and

perused the special civil application.

3. The petitioner has also filed civil application No.2184/93 and prayer has been made therein for amendment of the special civil application. Mere formal amendments have been sought in the special civil application in the form of corrections and I will take the note of those corrections in the course of dictation of this judgment, if necessary.

4. Challenge has been made by the petitioner by this special civil application to the order under which his services were terminated. A copy of this order has been produced on the record of this special civil application as annexure 'C' which is dated 28th November, 1984.

5. The petitioner was given the appointment purely on temporary basis for 29 days from 23rd June, 1980 under annexure 'A' dated 4th July, 1980. Under annexure 'B', the petitioner has been given the appointment on the post of tracer subject to the conditions of the approval of the same by the Superintending Engineer concerned with further condition that in case the Superintending Engineer does not approve his appointment it will come to an end automatically. The appointment of the petitioner as tracer was not approved by the Government and consequently his services were ordered to be terminated under the impugned order.

6. The recruitment and service conditions of the appointment to the post of tracer in the department concerned were regulated under the Rules published vide notification dated 26th June, 1980 published in the Gazette on 7th August, 1980. Rule 3 of the said Rules provides for eligibility for appointment to the post of tracer, and the candidate must possess certificate of Civil Draftsmanship and estimating awarded by Director of Technical Education, Government of Gujarat by the Institution recognised by the Government or has undergone trade course in Civil Draftsmanship in an Industrial Training institution recognised by the Government provided that preference may be given to a candidate who possesses a diploma in Civil Engineering. The petitioner admittedly does not possess any of the qualifications as referred in Rule 3 of the Rules. In view of the fact that the petitioner was lacking the requisite eligibility for appointment to the post of tracer, his appointment has rightly been not approved and consequence thereof would have and should have been automatic termination of his services. In this case, the respondents have not committed any error or illegality whatsoever in

terminating services of the petitioner. In case the relief of the nature as prayed for by the petitioner is granted then this Court will perpetuate an illegality.

7. The other contention raised in the writ petition regarding section 25-F of the Industrial Disputes Act is also of no substance. The recruitment to the post of tracer is regulated under the Rules framed by the Government. The petitioner was appointed in a Government department. Their Lordships of the Hon'ble Supreme Court in the case of Himanshukumar Vidyarthi vs. State of Bihar reported in 1997 (4) SCC 391 held that the department of Government cannot be treated as industry. The provisions of the Industrial Disputes Act, 1947 cannot be made applicable to a case where the appointments are to be regulated by statutory rules in a Government department.

8. Taking into consideration the totality of the facts of this case, I do not find any illegality in the order of termination of services of the petitioner. None of the legal and fundamental right of the petitioner is being infringed.

9. In the result, this special civil application fails and the same is dismissed. Rule discharged.

zgs/-